

Affidavit in support of 2255 motion

James Everett Dutschke

vs

Case number 1:13 CR 00081-001

United States

I, James Everett Dutschke, do hereby attest and testify that the following is entirely true and correct to the best recall of my memory.

I

After April 2013 arraignment, I had numerous conversations with appointed counsels George Lucas, Greg Park and, after September 2013, Ken Ceghlan, to demand actual toxicity reports from the FBI laboratories which I was certain would debunk the prosecutions continued false public narrative that the 2013 KC Letters were "laced with Ricin toxin". Some of that correspondence with appointed counsel, demanding the FBI produce the actual toxicity/purity reports, was in writing. Counsel informed me numerous times (as late as October meetings) that FBI and prosecutors claimed those results were not available as the National BioForensics Analysis Center was simultaneously dealing with "other" multiple "ricin" cases.

Furthermore, it is my very specific recollection that they claimed as early as April, 2013, both publicly and in court and specifically stated in the June indictment and a sworn Affidavit as well as in court to Judge Susan Alexander that the 2013 KC letters contained "deadly ricin toxin"; in fact, they had no idea what, in reality, the letters actually contained until six months later since, apparently, the final forensic analysis (which revealed there never was any 'ricin toxin' or toxic substance) was completed in October 2013.

II

I very specifically recall, among the first things discussed both in meetings and in written correspondence with appointed counsel Ken Coghlan, was that 'Ricin Toxin' is in no way a biological weapon (as well as all the scientific reasons why), but a chemical one.

His response was that this particular government's attorneys maintained a small phrase within the definition of 18 USC § 178 defining 18 § 175, ("or product of plants") qualified it as 'biological,' instead of chemical (18 USC § 229). After hearing this, and, of course trusting my attorneys' judgment of the prosecution's claim that 18 § 175 applied, I pressed appointed counsel Coghlan to research the statute and the legislative history because I still was certain that 18 § 175 simply could not apply. There is actual written physical documentation of my efforts pressing Coghlan on this matter and I always made and kept copies of my requests to counsel. He assured me, verbally but specifically, that the legislative history was being researched, which led me to believe, of course, that he was actually researching the statute as it was intended and as it was written; as would be proper for counsel to do.

III

I very specifically recall NUMEROUS conversations with appointed counsel Coghlan that specifically discussed, and in great detail, the exact methodology used to denature the proteins, or DE toxicity, the granular (similar to cat litter) castor fertilizer that I suspected may have been used in the 2013 KC letters, as well as the commonality of and the commercial availability of this same castor fertilizer; including the hundreds and thousands of tons of this NON-toxic fertilizer sold worldwide and the similar methods used by commercial manufacturers to ensure DE detoxification of this common castor product.

IV

Ken Coghlan related to me he consulted with REAL scientists (NOT a 'government expert'), peer reviewed researchers, PhDs in proteomics, that have verified that the exact DE muturing methods I described to appointed Counsel Coghlan would, in fact, DE nature and therefore DE toxicity the castor fertilizer component, thereby producing a granular substance that in no possible way could be toxic.

V

This particular government continued to apply pressure toward a plea deal; Publicly threatening a life sentence, threatening new allegations and even threatening to arrest and prosecute my wife, who had to get an attorney appointed to her. The Attorney General issued a SAM order preventing me from communicating with the press to correct the deliberately false reporting.

VI

January, 2014, I sign a 300 month plea agreement. During the drafting of the agreement, I was given assurances, through counsel, that this particular government was specifically NOT seeking placement in the maximum security, ADX prison facility. The agreement itself specifically dropped two absurd counts AND specifically promises 'No Further prosecution' by this particular government, assuring me, therefore, that NOTHING related to the case or any criminal prosecution or hearing by this government or adverse sentencing can possibly occur. At the time of the signing (January 2014), I still have not seen any toxicity/purity analysis.

VII

The PSI was completed within six weeks and riddled with error and untruths; At my direction, appointed counsel, Coghlan, prepared our many objections to correct the PSI. Attached to our objections, I saw, and for the first time, the very report I was looking for since the previous year; that is the analysis from the National BioForensics Analysis Center which shows that this government had known for some time that there never existed any 'deadly toxin' as they had publicly claimed (since October 2013).

The government's Laboratory's final analysis showed specifically one envelope showed ricin PROTEIN (not toxin) percentages of 0.51% and the other (there were only two) testable envelope percentages of 0.097% of ricin Proteins (not toxin) placing, easily within margin of error, both envelopes substances FAR below the statutory amount required to even be considered for legal compliance, easily within the statutory 'Round to Zero' rule.

The margin of error may put the actual PROTEIN (not toxin) amount somewhere between the two trace measurements.

Since actual Ricin Toxin is but one of 13,000 potential proteins contained within castor product (although extremely rarely even present at all), the actual Ricin TOXIN amount would be so undetectable as to be immeasurable (hence the 'Round to Zero' rule); However, even if the Forensics analysis somehow magically represented the FULL amount of measured ricin PROTEIN as Ricin Toxin (although that is scientifically impossible), that STILL means that only a few MICROgrams existed. In fact, even considering the government's own final analysis, only a few micrograms of ricin PROTEIN (not toxin) were detected. A microgram is one THOUSANTH of a milligram. Therefore it takes one THOUSAND micrograms to even equal one single milligram. In other words, the Forensics provided by this particular government entirely disproved the claims made by this particular government

debunking the very public statements of a 'deadly toxin'; the scientific analysis, by this government's own laboratory showed there was nothing at all remotely toxic about the contents of the 2013 KC letters. In fact, it showed the contents of the two testable KC letters were AS PURE as the standard for drinking water!

Although this was precisely the document I had been waiting and hoping for nearly a year, I had not seen this document until just prior to the sentencing hearing, obviously AFTER the agreement (2014) was signed. I was furious to discover that this particular government had known for some time, before the agreement was drafted, in fact, that there was nothing toxic about the KC letters; in fact, the laboratory's final analysis was dated October 8th of 2013. Just a few days after the release of this exculpatory evidence, the Attorney General issued a SAM order which silenced both me and my attorney on my behalf, barring contact with the media.

I have no idea when my attorney discovered this laboratory report, but I do know, for certain, I did not see it until AFTER the agreement was signed.

VIII

During the April 13th, 2014 sentencing hearing, the issue of NON toxicity was specifically addressed by both myself and appointed counsel. Appointed counsel Coghlan did, albeit feebly, attempt to clearly reference that very laboratory report which demonstrated that these levels of DE toxification could ONLY be achieved by determined intent and obvious effort to ensure that the fertilizer was NOT toxic, and therefore NOT illegal.

I personally witnessed government prosecutor, Chad Lamar's response, very misleading to Judge Aycock, which was to conflate this issue with that of new sprouts of marijuana plants, implying to Judge Aycock that any amount, including trace amounts, are illegal under Federal law. (Refer to April 13, 2013 transcript as Coghlan told the court that an immeasurable amount, "not even visible to the naked eye" and is clearly and confirmed as not toxic simply cannot be treated as if it is the 'deadly toxin' the prosecution claimed for a year.)

When confronted with the issue of non-toxicity by me, personally, and the tactics this government prosecutor was using to confuse the issue, I witnessed this government's prosecutor then finally admit, in open court that although he was aware of the toxicity report, (thereby demonstrating full knowledge of the issue of non toxicity,) ; it seemed to matter none to him because, as he then put it, "Dutschke couldn't have KNOWN it wasn't toxic unless he tested it on an animal or human first."

(Refer to same transcript, April 13, 2014)

I recall my feelings of total shock at his admission, and was completely appalled of this statement, finally made in public; that despite his knowledge (for some time), he continued to prosecute anyway. I was disgusted by the total lack of outrage from all those in that courtroom who must have heard his admission contradicting Everything this particular overzealous prosecutor had publicly claimed for a year.

I was, in fact, so shocked, I responded by saying, "Bring me the contents of the KC letters that the prosecutors have told the

world over the last year was a deadly poison. I will sprinkle it on a peanut butter and jelly sandwich and eat it! Then I will wash it all down with a glass of chocolate milk!" (April 13, 2013 transcript)

That request was, of course, denied.

IX

Although appointed counsel, Coghlan, was specifically given, and in writing, an exact list of easy to research government resources by me outlining why the 175 statute (Biological weapons) can NOT apply (Ricin Toxin is chemical, 229, not biological), and his early promise to me that the legislative and statutory history was to be included in his research, appointed counsel, Coghlan never gave any indication, even when specifically asked, that ~~he never~~ took the brief moments it would have taken to read the statutes or the treaties they implement or the corresponding regulations: (Guidelines Manual § 2 m6-1, Application Notes, 1, Definitions, "Listed precursor or listed toxic chemical"), (2 m6-1, Application Notes, 1, Definition, "Select Biological Agent"), the Chemical Weapons Convention, 18 USC § 229-229F (Chemical Weapons), 18 § 229 F(6)(B), (7)(A), (8)(B), The Chemical Weapons Convention Implementation Act (22 USC § 6701-6771), 22 § 6701 (10)(H), 22 § 6771 (C), Activities Involving Schedule 1 chemicals (15 CFR § 712-1 - "Round to Zero" rule), Supplement No 1 to 15 § CFR part 712 - Schedule 1 chemicals (8), 42 CFR § 73.3 (HHS select agents and toxins) (b), 42 CFR § 73.3 (d)(2)(3), Biological weapons Convention and the Biological Weapons Act of 1989.

This reasonable and easy to find research would easily have revealed, and in exact detail, the specific exceptions which completely disqualify the contents of the KC letters from criminal prosecution,

and in very specific, inarguable and very explicitly described terms by either 18 USC § 175 (Biological) or 18 USC § 229 (chemical).

~~X~~

I did not see the final analysis from the National BioForensics Analysis Center, which confirmed there was no toxic or illegal substance at all, until AFTER the agreement was signed (Jan, 2014), and the PSI was complete and my many objections to the error-laden PSI was compiled by appointed counsel Coghlan who actually included that very labwork in the objections.

~~XI~~

In addition to the NBFAC analysis confirming there was NO toxic substance, another laboratory report was introduced during the sentence hearing and read aloud as part of the locution, submitted as part of the locution notes, it should now be part of the record. This second laboratory report (dated May, 2013) conclusively demonstrated perjury on the part of the testifying FBI agent at the detention hearing as he made the claim that ricin toxin was discovered on a dust mask and a letter sent to a county court judge. Specifically, the forensic analysis provided by the FBI's own laboratory revealed "Ricin NOT detected" on those items, despite their public claims. As I recall, the date of this particular laboratory report was PRIOR to the agent's false testimony, under oath, and proved that he knew in advance his testimony was false.

Both of these laboratory documents, therefore, have already been entered into the records during sentencing hearings. I cannot

include them with this Affidavit and Filing and can only refer to them since this particular government has taken all of my legal casework from me, a year ago, and has not returned it to me. A massive impediment I suspect intentionally committed to prevent my timely filing of this appeal.

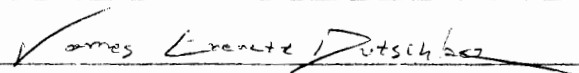
I have used every means available to me, including a Habeas appeal, to return this exculpatory evidence and more. I can only conclude now that the prosecution has done and will do every means available to them to prevent the return of my casework, and avoid the actual discussion of the merits of the arguments of the accompanying 2255.

The 2255 motion itself was deposited into the Facilities mail system with S.I.S. tech, Turner, on 4-16-15.

I affirm all the above and attest to its truthfulness according to the best of my ability to recall.

Signed this 23rd day of April, 2015.

James Everett Dutschke

James Everett Dutschke

**UNITED STATES PENITENTIARY – ADMINISTRATIVE MAXIMUM
FLORENCE, COLORADO
INFORMAL RESOLUTION FORM**

Notice to Inmate: Inmates have the responsibility to use this Program in Good Faith and in an Honest and Straightforward manner.

Inmate Name: James Everett Dutschke Reg. No. 15536-042
Unit: H Date: 4-22-15

You are advised that normally prior to filing a Request for Administrative Remedy, BP-229(13), **you must attempt to informally resolve your complaint** through your Correctional Counselor. Please follow the three steps listed below:

1. **State your complaint:** Last Thursday (4-16-15) I mailed a 2255 which was supposed to include an Affidavit in support. I had to send the 2255 without the Affidavit because the Notary I requested two weeks ago has not come to my cell. I can send the Affidavit to amend the 2255 sent last Thurs. (4-16), but I still need a notary public. Please arrange one as soon as possible, sooner even!

(If more space is needed, you may use up to one letter size (8 1/2 x 11) continuation page. You must also submit one copy of supporting exhibits. (Exhibits will not be returned with the response to BP-229(13) responses.))

2. **Briefly State what resolution you expect:** Please arrange a notary public for this Affidavit, to amend my 2255 which was sent (4-16-15).

Inmate's Signature: [Signature] Date: 4-21-15

Counselor's Signature: [Signature] Date: 4-23-15

Department Involved: _____ Date Assigned: _____ Date Due: _____

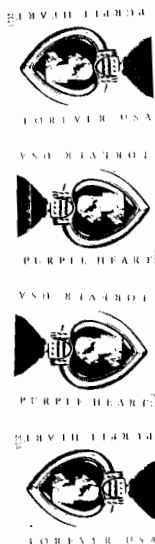
Department Response regarding Complaint: Spoke with Legal Dept. Currently there are NO Certified Notaries at the ADX at this time. You may send item to your attorney to be Notified if Necessary.

Dept. Hd. Signature (Complaint): _____ Date: _____
Unit Manager's Review: [Signature] Act 4/m Date: 4-23-15
Informally Resolved: _____ Date: _____

	BP-8 ISSUED	BP-8 RETURNED	BP-9 ISSUED	BP-9 RETURNED	REMEDY CLERK
DATE	<u>4-22-15</u>	<u>4-22-15</u>	<u>4-28-15</u>		
TIME					
COUNSELOR	<u>S-1K</u>	<u>SA</u>	<u>B-1K</u>		

Name: Somos Everett Dutschke
Reg. No: 15536-042
U.S. PENITENTIARY MAX
P.O. BOX 8500
FLORENCE, CO 81226-8500

UM-15-009-023-0



United States District Court
Northern District of Mississippi

Office of the Clerk

911 Jackson Avenue

Suite 369

Oxford, MS

38655

